



BOARD OF ETHICS
CITY OF CHICAGO

In the Matter of:)
)
John McGuire) Case No. 18023.IG.2
Respondent)
)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into between the Chicago Board of Ethics (“Board”) and John McGuire (“Respondent”), a plumber licensed by the City of Chicago and an employee¹ of Pro Sewer Inc., a City contractor, pursuant to §2-156-385(4) of the City of Chicago Governmental Ethics Ordinance (“Ordinance”). On May 14, 2019, after meeting with the Respondent, the Board sustained its finding that there was probable cause to conclude that the Respondent violated the Ordinance. The Board concluded that the evidence before it, including the results of an investigation conducted by the Office of the Inspector General (“OIG”) and Respondent’s testimony made to the OIG and his responses to the Board, shows that the Respondent violated the Ordinance’s Gift and Other Favors, §2-156-142 provision. The parties agree to the following terms to resolve this matter.

RECITATION OF RELEVANT FACTS

- (1) At all times relevant to this matter, Respondent was an employee of Pro Sewer, Inc., a City contractor, doing work with the Chicago Department of Water Management (“DWM”). Pro Sewer, Inc.’s work is subject to inspection by the DWM.
- (2) At all times relevant to this matter, Respondent was also an employee of Wrigley View Properties, LLC, a rooftop venue. Wrigley View Properties offers accommodations to its employees, such as the Respondent, to admit their family or friends without charge. The accommodation is limited to standing room only admission. The accommodation includes food and refreshments.
- (3) Respondent offered and provided Arthur Olvera, then a DWM mason inspector (now a former City employee), access for two persons to a 2016 Chicago Cubs NLCS playoff game at the Wrigley View Properties.

¹ In the Office of Inspector General’s Summary Report of Investigation, Mr. McGuire is referred to as the “owner” of Pro Sewer.

- (4) Mr. Olvera, then a DWM mason inspector, accepted the Respondent's offer and did not pay him for his attendance at the Wrigley View Properties for the 2016 Chicago Cubs NLCS playoff game.
- (5) The fair market value for a standing room only rooftop ticket for this game, including food and refreshments, was valued well in excess of \$50 for two persons.

STATEMENT OF RELEVANT LAW

- (6) The issues in this case are: (i) whether Respondent violated the Ordinance by offering the gift of access for two to a 2016 Chicago Cubs NLCS playoff game at the Wrigley View Properties worth in excess of \$50 in a calendar year; and, (ii) whether the gift was permissible because it was given by a "personal friend."
- (7)
 - (i) The Ordinance defines "gift" in §2-156-010(m) as anything of value given without fair-market consideration.
 - (ii) Ordinance §2-156-142(c) prohibits any person from giving a City employee a gift worth more than \$50 in a calendar year unless an exception applies.
 - (iii) One of these exceptions is the "personal friendship" exception, §2-156-142(d)(6), which allows "any gift from a personal friend, unless the ... employee has reason to believe that, under the circumstances, the gift was given because of the official position ... of the ... employee."
- (8) The Board concluded in the related Olvera case, Board Case No. 18023.IG, that the "personal friendship" exception did not apply to this situation and that neither a business acquaintance or a person with whom a City employee or official's sole contacts are through work qualifies as a "personal friend" for purposes of §2-156-(d)(6).²

BOARD CONCLUSIONS AND DETERMINATIONS

- (9) At its May 14, 2019 meeting, the Board reached the following factual conclusions based on the record before it including the investigative report issued by the OIG, the corroborating evidence supplied by the OIG therewith, statements of Respondent during a meeting held with the Respondent and his attorney, pursuant to §2-156-385 of the Ordinance:
 - a) Respondent is an employee of Pro Sewer, Inc., a City contractor, doing work with DWM. Pro Sewer, Inc.'s work is subject to inspection by the DWM. Respondent is an employee of Wrigley View Properties, LLC, which offers accommodations to its employees to admit their family or friends without charge.

² The term "personal friend" is not defined in the Ordinance. The Board concluded that some of the considerations for the application of this exception include, but are not limited to, whether interactions occurred only in the context of work, whether they socialized outside of work, met each other's families, or had a history of exchanging gifts. Cf. State Officials and Employees Ethics Act, 5 ILCS 430/10(7).

- b) Respondent offered and provided Arthur Olvera, then a DWM mason inspector, access for two to a 2016 Chicago Cubs NLCS playoff game at the Wrigley View Properties. The fair market value for this access exceeded \$50 for two persons.
 - c) Mr. Olvera, then a DWM mason inspector, accepted the Respondent's offer and did not pay Respondent for his attendance at the Wrigley View Properties for the 2016 Chicago Cubs NLCS playoff game.
 - d) Respondent and Mr. Olvera were not personal friends as contemplated under the Ordinance. A business acquaintance, a casual acquaintance, or a person with whom a City employee's or official's sole contacts are through work does not qualify as a "personal friend" for purposes of §2-156-142(d)(6). Thus, the Board did need not to reach the issue of whether the gift was given because of the recipient's official position, because the Board concluded that the facts and evidence shows that the Respondent and the President were not "personal friends" for purposes of the Ordinance.³
 - e) Under the Ordinance, it is relevant only that the "gift" is something of value, not whether the donor actually incurred a cost related to the gift given. Providing a City employee or official access to an event for which the general public would have had to pay to attend is the relevant *something of value*, and that amount cannot exceed \$50 in value.
- (10) At its May 14, 2019 meeting, the Board sustained its determination, made at its January 18, 2019 meeting, that there is probable cause to conclude that the Respondent violated Ordinance §2-156-142.

TERMS OF THE SETTLEMENT AGREEMENT

The above fact recitations, statements of law and Board conclusions and determinations are incorporated into and made a part of this Agreement.

- (11) The parties agree to enter into this Agreement to resolve all factual and legal issues that arose in this matter and to reach a final disposition without the necessity of an evidentiary hearing, pursuant to §2-156-392 of the Ordinance, to determine whether the Respondent violated the Ordinance.
- (12) Respondent acknowledges and agrees that, from the record before it, the Board has determined that there is probable cause to conclude that he offered and provided a gift to a City employee to watch the Cubs NLCS playoff game on October 22, 2016 at the Wrigley View Properties, at a value in excess of \$50. Respondent further acknowledges and agrees that, were the matter to proceed to an evidentiary hearing, pursuant to §2-156-

³ The Board notes that there is a high burden for a City employees or officials to show that a gift from a person being regulated or inspected by them or their City department was not given because of their official City position.

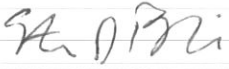
392 of the Ordinance, the Board would make a final determination that he violated the Ordinance on these facts.

- (13) Pursuant to §2-156-385(4)(i), the Board may seek to settle the matter by fine.
- (14) Pursuant to §2-156-465 (b)(4), the Board has the authority to impose a fine between \$1,001 and \$5,000 for a violation of the gift provision. The Board determined that it would be appropriate to seek to settle this matter by assessing the minimum \$1,001 fine against the Respondent.
- (15) In recognition of the foregoing, Respondent agrees that the evidence adduced in the matter shows that he violated the Ordinance by offering and providing a prohibited gift to a City employee on October 22, 2016. Respondent agrees to pay a fine of ONE THOUSAND ONE and 00/100 DOLLARS (\$1001.00) to the Board within thirty (30) days of this Disposition, by money order, cashier's, or certified check, made payable to the "Board of Ethics," and that, if the Board has not received such amount by that date, Respondent shall pay interest of nine percent (9%) per annum on the unpaid balance until paid-in-full; provided, however, that no interest shall be due and owing that is greater than provided for in 815 ILCS 205/4.
- (16) Respondent acknowledges that this Agreement is a public and final resolution of the potential violations and recommendations made by the OIG in its investigative report as presented to the Board of Ethics in this matter. Respondent also acknowledges that the Board shall make this Agreement public, pursuant to §2-156-385(4), and, except as may be provided by applicable law, all writings or records with respect to the settlement agreement or its negotiations in the Board's possession will remain confidential.
- (17) Respondent confirms that he has entered into this Agreement freely, knowingly and intentionally, without coercion or duress; and, after having had the opportunity to be represented by an attorney of his choice, accepts all the terms and conditions contained herein without reliance on any other promises or offers previously made or tendered by any past or present representative of the Board. Respondent confirms that he fully understands all the terms of this Agreement. The terms of this Agreement are contractual and not mere recitals. If any of the provisions of this Agreement shall be found invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (18) Respondent understands and voluntarily waives and assigns, on his and his successors' behalf, any and all: (i) procedural rights under the City's Municipal Code, including a merits hearing pursuant to §2-156-392 of the Ethics Ordinance, or to subpoena witnesses to testify, confront, and cross-examine all witnesses; and (ii) rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political subdivision or office of the State of Illinois or the United States, arising out of the Respondent's violations.

- (19) Respondent releases and holds harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's enforcement and settlement of the violation described in the Agreement, and agrees not to contest the lawfulness, authority, jurisdiction, or power of the Board in imposing the sanction which is embodied in this Agreement, and the right to make any legal or equitable claim or to initiate legal proceedings of any kind against the Board, or any members or employees thereof, relating to or arising out of this Agreement or the matters recited herein.
- (20) Once executed by Respondent, the Board staff shall submit this Agreement to the Board at its next regularly scheduled meeting. The Board must determine by a majority vote that it approves the Agreement and the Board must execute and date the Agreement before the Agreement becomes effective.
- (21) The parties agree that this Agreement shall become invalid in the event that the Board refuses to approve it. Respondent acknowledges that if the Agreement is not approved or executed by the Board that the Board may seek to proceed to a hearing on the merits, pursuant to §2-156-392 of the Ethics Ordinance. Respondent further agrees that no member of the Board or its staff shall be disqualified from participating in any subsequent proceedings in this matter held pursuant to §2-156-392 of the Ethics Ordinance. If this Agreement is not approved by the Board, the parties agree that no statements or representations of any kind made in the course of negotiating this agreement will be used by either party for the purpose of establishing liability at any future hearing or proceeding.
- (22) Respondent agrees that failure to comply with the terms of this Agreement constitutes a breach of the Agreement and that the Board can proceed to a hearing on the merits or take any other action as permitted by law.
- (23) In consideration of Respondent's full compliance with all of the terms pursuant to this Agreement, the Board waives any further penalties or fines against Respondent for any further proceedings arising out of the investigation and/or recommendations described in this Agreement.
- (24) The Agreement contains the entire agreement between the Board and the Respondent and it may not be modified unless the modified Agreement is re-executed and re-dated by both parties. This Agreement is entered into in the State of Illinois and shall be construed and interpreted in accordance with its laws.
- (25) This Agreement shall not be effective until all parties have affixed their signature below.

Dated as written above and executed below:

FOR THE CITY OF CHICAGO BOARD OF ETHICS



Steven I. Berlin, Executive Director

6-14-19

Date

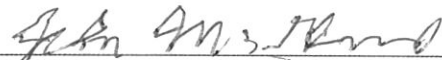


William Conlon, Board Chair

6-14-19

Date


FOR THE RESPONDENT



John McGuire, Respondent

6-8-19

Date



William F. Marutzky
Counsel for the Respondent

6-10-19

Date